

## **§ 90.15**

for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

### **§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.**

A recipient is permitted to take an action otherwise prohibited by § 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

### **§ 90.16 Burden of proof.**

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 90.14 and 90.15 is on the recipient of Federal financial assistance.

## **Subpart C—What are the Responsibilities of the Federal Agencies?**

### **§ 90.31 Issuance of regulations.**

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the FEDERAL REGISTER to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; and

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall submit its final agency regulations to HHS for review no later than 120 days after publication

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of proposed agency age discrimination regulations.

(d) Final agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not be published until the Secretary approves them.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursement procedure as described in § 90.48 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a Federal statute or in regulations affecting financial assistance administered by the agency.

### **§ 90.32 Review of agency policies and administrative practices.**

(a) Each agency shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each Federal agency and whether those age distinctions are permissible under the Act and implementing regulations.

(b) No later than 12 months from the date the agency published its final regulations, the agency shall publish, for public comment, a report in the FEDERAL REGISTER containing:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) The justification under the requirements of the Act and these regulations for each age distinction to be continued;

(4) A list of the age distinctions not contained in regulations but which will be adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553; and

(5) A list of the age distinctions to be eliminated.

(c) Beginning with the effective date of an agency's final regulations, the agency may not impose a new age distinction unless the age distinction is